SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PHARMACY AND KIDI, INC. d/b/a CABOOL PHARMACY

Come now KIDI, Inc. d/b/a Cabool Pharmacy ("Respondent" or "Cabool Pharmacy") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its permit. Being aware of these rights provided it by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

Respondent acknowledges that it has received a copy of the draft complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, numbered 003329, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

Joint Stipulation of Facts

1. Petitioner, the Missouri Board of Pharmacy ("the Board"), is an agency of the State of Missouri created and established by Section 338.110, RSMo, for the purpose of administering and enforcing the provisions of Chapter 338, RSMo.

2. Respondent, KIDI, Inc. d/b/a Cabool Pharmacy ("Cabool Pharmacy"), holds a pharmacy permit issued by the Board, Permit No. 003329, to operate a pharmacy at 518 Main Street, Cabool, Missouri. Cabool Pharmacy's permit is, and was at all times relevant herein, current and active.

3. On or about August 3, 2005, the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs ("Bureau" or "BNDD"), conducted an inspection of controlled substance record keeping and security at Cabool Pharmacy.

4. Based upon the findings of this inspection, the BNDD issued a Letter of Censure dated September 14, 2005, to Cabool Pharmacy.

5. The Letter of Censure noted the following violations:

A. An annual inventory was performed on January 1, 2003, and not performed again until February 11, 2005. The pharmacy did not maintain an annual inventory.

Section 195.050.6, RSMo 2000, states:

> Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

Regulation 19 CSR 30-1.042(3) states:

> (3) Annual Inventory Date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least once a year. The annual inventory may be taken on any date that is within one year of the previous annual inventory date.

B. The annual inventories performed on January 1, 2003 and February 1, 2005, do not document the time of day or if the inventories were performed at the opening or closing of business.

Section 195.050.6, RSMo 2000, states:

> Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

Regulation 19 CSR 30-1.042(1)(D) states:

> A registrant may take an inventory either as of the opening of business or as of the close of business on the inventory date. The registrant shall indicate on the inventory records whether the

inventory is taken as of the opening or as of the close of business and the date the inventory is taken.

C. The pharmacy did not add Schedule V pseudoephedrine products to their inventory. Pseudoephedrine is codified as a Schedule V controlled substance pursuant to Section 195.017.10(4), RSMo Supp.

Section 195.050.6, RSMo 2000, states:

> Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

Regulation 19 CSR 30-1.042(4) states:

> Inventory Date for Newly Controlled Substances. On the effective date of a rule by the Department of Health adding a substance to any schedule of controlled substances, which substance was not listed immediately prior to that date in any such schedule, every registrant required to keep records who is manufacturing, distributing or dispensing that substance shall take inventory of all stocks of the substance on hand. After that, this substance shall be included in each inventory made by the registrant.

D. The pharmacy did not document the date of receipt on their records of receipt.

Section 195.050.6, RSMo states:

> Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

Regulation 19 CSR 30-1.048(1)(C) states:

> The number of commercial containers of each finished form received from other persons, including the date of and number of containers in each receipt and the name, address and registration number of the person from whom the containers were received.

E. DEA Official Order Form #045164654 indicates the #1 package of 100 dosage units of oxycodone RE, 80mg and morphine sulfate IR 30mg tablets were ordered and #2 packages were received. The invoice indicates that #1 package of 100 was actually shipped. Oxycodone is codified as a Schedule II controlled substance pursuant to Section 195.017.4(1)(a)n, RSMo Supp. 2003. Morphine Sulfate IR is a name brand for a drug product containing morphine, which is codified as Schedule II controlled substance pursuant to Section 195.017.4(1)(a)m, RSMo, Supp. 2003. The pharmacy did not maintain complete and accurate records.

Section 195.050.6, RSMo 2000, states:

> Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

Regulation 19 CSR 30-1.044(1) states:

> Every registrant required to keep records shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported or otherwise disposed of by him/her.

F. The pharmacy dispensed Schedule II controlled substances on prescriptions that did not bear the prescriber's DEA number or the patient's address as required.

Section 195.060.1, RSMo, 2000 states:

Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulations of the department of health and senior services. All written prescriptions shall be signed by the person prescribing the same. All prescriptions shall be dated on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is prescribed, and the full name, address, and the registry number under the federal controlled substances laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of the animal for which the drug is prescribed. The person filling the prescription shall either write the date of filling and his own signature on the prescription or retain the date of filling and the identity of the dispenser as electronic prescription information. The prescription or electronic prescription information shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this law. No prescription for a drug in Schedule I or II shall be filled more than six months after the date prescribed; no prescription for a drug in schedule I or II shall be refilled; no prescription for a drug in Schedule III or IV shall be filled or refilled more than six months after the date of the original prescription or be refilled more than five times unless renewed by the practitioner.

G. The pharmacy dispensed controlled substances to patients in long term care facilities in absence of a valid prescription.

Section 195.060.1, RSMo 2000, states:

Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulations of the department of health and senior services. All written prescriptions shall be signed by the person prescribing the same. All prescriptions shall be dated on the day when issued and bearing the full name and address of the patient for whom, or of the owner

of the animal for which, the drug is prescribed, and the full name, address, and the registry number under the federal controlled substances laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of the animal for which the drug is prescribed. The person filling the prescription shall either write the date of filling and his own signature on the prescription or retain the date of filling and the identity of the dispenser as electronic prescription information. The prescription or electronic prescription information shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this law. No prescription for a drug in Schedule I or II shall be filled more than six months after the date prescribed; no prescription for a drug in schedule I or II shall be refilled; no prescription for a drug in Schedule III or IV shall be filled or refilled more than six months after the date of the original prescription or be refilled more than five times unless renewed by the practitioner.

H. The Bureau is in receipt of Respondent's letter of correction dated May 28, 2004. In this letter, Respondent reported that in order to reconcile the audit that Respondent located a copy of a receipt invoice that was not present during the initial inspection and audit. The receipt record does not document the date the drugs were received.

Section 195.050.6, RSMo states:

Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

Regulation CSR 30-1.048 states:

(1) Each individual practitioner, institutional practitioner and pharmacy shall maintain records with the following information

for each controlled substance received, maintained, dispensed or disposed:

(A) The name of the substance;

(B) Each finished form (for example, ten milligram (10 mg) tablet or ten milligram (10 mg) concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (for example, 100 tablet bottle or three milliliter (3 ml) vial);

(C) The number of commercial containers of each finished form received from other persons, including the date of and number of containers in each receipt and the name, address and registration number of the person from whom the containers were received;

(D) The number of units or volume of the finished form dispensed including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed and the written or typewritten name or initials of the individual who dispensed or administered the substance;

(E) The number of units or volume of the finished forms, commercial containers, or both, disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

Section 195.040.7, RSMo 2000, states in material part:

7. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department of health and senior services upon a finding that the registrant:

* * *

(4) Has violated any federal controlled substances statute or regulation, or any provision of sections 195.005 to 195.425 or regulation promulgated pursuant to sections 195.005 to 195.425.

6. Cabool Pharmacy violated Missouri rules and regulations governing the practice of pharmacy by failing to assure that all procedures of the pharmacy in the handling, dispensing

and recordkeeping of controlled substances were in compliance with Missouri rules and regulations.

7. The employees and customers of Cabool Pharmacy had a relationship of professional trust and confidence in Cabool Pharmacy in that its employees and customers relied on it to make reasonable efforts to ensure compliance with all relevant pharmacy and drug laws and standards of practice.

8. Cabool Pharmacy's conduct alleged herein constitutes a violation of the professional trust and confidence placed in it by its employees and customers.

9. Cabool Pharmacy should have known that violations of pharmacy laws or rules had occurred.

10. As a follow-up to the Letter of Censure issued by the BNDD dated September 14, 2005, on or about January 12, 2006, Tom Glenski and John Heavin, inspectors for the Board, met with John W. Morgan and conducted an investigation and concurrent inspection of Cabool Pharmacy.

11. The inspectors noted that all of the issues outlined in BNDD's Letter of Censure had been corrected except the following three (3) Schedule II controlled substance prescriptions that did not bear physician signatures.

A. Prescription # 2110772 – a prescription for Oxycontin 10mg #30 for patient B.S.;

B. Prescription # 2110781 – a prescription for Fentanyl Patch 25 mcg #5 for patient E.S.; and

C. Prescription # 2110782 – a prescription for Fentanyl Patch 25mcg #5 for

patient Q.M.

12. Mr. Morgan informed the Board's inspectors that the above-referenced prescriptions were orders for nursing home patients and that he sent the medication to the home prior to obtaining a physician signature on the prescriptions.

13. Dispensing controlled substances to long term care patients without valid prescriptions is in violation of Section 195.060.1, RSMo, which states:

> Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulations of the department of health and senior services. All written prescriptions shall be signed by the person prescribing the same. All prescriptions shall be dated on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is prescribed, and the full name, address, and the registry number under the federal controlled substances laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of the animal for which the drug is prescribed. The person filling the prescription shall either write the date of filling and his own signature on the prescription or retain the date of filling and the identity of the dispenser as electronic prescription information. The prescription or electronic prescription information shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this law. No prescription for a drug in Schedule I or II shall be filled more than six months after the date prescribed; no prescription for a drug in schedule I or II shall be refilled; no prescription for a drug in Schedule III or IV shall be filled or refilled more than six months after the date of the original prescription or be refilled more than five times unless renewed by the practitioner.

14. Dispensing prescriptions for controlled substances that were not signed by the prescriber is in violation of 4 CSR 220-2.018 which states in pertinent parts:

(1) In order for a prescription to be valid for purposes of dispensing a medication by a pharmacy, it must conform to all requirements as outlined in sections 338.056 or 338.196, RSMo, and contain the following information:

* * *

(C) The prescriber's name, if an oral prescription, signature if a written prescription.

15. During the inspection, it was also revealed that Cabool Pharmacy had relabeled an Express Script prescription for a nursing home patient with the Cabool Pharmacy label.

16. Section 338.315, RSMo, states:

It shall be unlawful for any pharmacist, pharmacy owner or person employed by a pharmacy to knowingly purchase or receive any legend drugs from other than a licensed or registered drug distributor or licensed pharmacy. Any person who violates the provisions of this section shall, upon conviction, be adjudged guilty of a class A misdemeanor. Any subsequent conviction shall constitute a class D felony.

17. Respondent relabeled and reused a prescription originally dispensed by another pharmacy in violation of 4 CSR 220-3.040 which states in pertinent parts:

(2) A pharmacist or pharmacy may receive and reuse drugs from long-term care facilities, hospitals, and hospice facilities (as regulated by the Department of Health and Senior Services, in 19 CSR 30-35.020 Hospices Providing Direct Care in a Hospice Facility), provided that the following conditions are met:

(B) The drugs were originally dispensed by the pharmacist or pharmacy to the facility delineated in section (2).

18. Cabool Pharmacy maintained both outdated and unlabeled medications in active stock.

19. Maintaining outdated medications in active stock is in violation of 4 CSR 220-2.010(6) which states:

(6) Drugs and devices that are maintained as part of the pharmacy inventory or are being processed for dispensing or other distribution purposes must be physically separated at all times from articles, supplies or other drugs that are for employee personal use or that are outdated, distressed, misbranded or adulterated. An area separate from drug storage must be used to store quarantined, nonusable substances. Areas used for this type of drug storage must be clearly identified. Any prescription drugs that are present in a licensed pharmacy but are for the personal use of pharmacy personnel must be labeled in accordance with section 338.059, RSMo.

20. Maintaining unlabeled medications in active stock is in violation of 4 CSR 220-2.130(D)(2) which states in pertinent parts:

(D) Any prepacked drug must have a label affixed to it which contains, at a minimum, the name and strength of the drug, the name of the manufacturer or distributor, an expiration date as defined in subsection (1)(C) and lot number . . .
(2) The term prepacked as used in this rule is defined as any drug which has been removed from the original manufacturer's container and is placed in a dispensing container for other than immediate dispensing to a patient.

21. Prescriptions were compounded at Cabool Pharmacy, but Cabool Pharmacy did not have a compounding log book.

22. Cabool Pharmacy's failure to keep a compounding log book is in violation of 4 CSR 220-2.400(7)(A) which states:

(7) Appropriate quality control measures shall be maintained by the pharmacy and its staff over compounding methods.
(A) Such methods shall include the following and shall be followed in the execution of the drug compounding process. A separate log shall be maintained which includes:
1. Methods for the compounding of drug products to insure that the finished products have the identity, strength, quality and purity they purport or are represented to possess;
2. Date of compounding;

3. Identity of the compounding pharmacist;
4. A listing of the drug products/ingredients and their amounts by weight or volume;
5. Description of the compounding process and the order of drug product/ingredient addition, if necessary for proper compounding;
6. The identity of the source, lot number and the beyond-use date of each drug product/ingredient, as well as an in-house lot number and a beyond-use date for bulk compounded products; and
7. An identifying prescription number or a readily retrievable unique identifier for which the compound was dispensed.

23. During the inspection, three pharmacy technicians were observed filling and dispensing new and refill prescriptions to patients without the direct supervision of a pharmacist as outlined as follows:

A. Pharmacy technician Melanie Cook prepared and dispensed an Atenolol 50mg refill to a patient without pharmacist verification and/or supervision.

B. Pharmacy technician Melanie Cook prepared and dispensed a new Clobestasol prescription, Prescription # 6691052, without pharmacist verification and/or supervision.

C. Pharmacy technician Reva McLain prepared and dispensed new Prescription # 42658456 for Lortab 5/500 #15 without pharmacist verification and/or supervision.

D. Pharmacy technician Reva McLain prepared and dispensed new Prescription #6691051 for Prenatal Ultra #60 without pharmacist verification and/or supervision.

E. Pharmacy technician John Williams prepared and dispensed two refills

without pharmacist verification/supervision.

24. At no time during the inspection did any of the technicians attempt to secure Mr. Morgan's approval of their prepared prescriptions and at no time did Mr. Morgan attempt to verify any of the technicians' work prior to the delivery of the prescriptions to the patients.

25. A pharmacy technician is defined by 4 CSR 220-2.700(1) as follows:

> (1) A pharmacy technician is defined as any person who assumes a supportive role under the direct supervision and responsibility of a pharmacist and who is utilized according to written standards of the employer or the pharmacist-in-charge to perform routine functions that do not require the use of professional judgment in connection with the receiving, preparing, compounding, distribution or dispensing of medications.

26. Failure to verify and inspect the prescriptions prepared by the pharmacy technicians is in violation of 4 CSR 220-2.010(1)(B) which states:

> (B) Whenever, in a pharmacy or other establishment holding a Missouri pharmacy permit, a person other than a licensed pharmacist does compound, dispense or in any way provide any drug, medicine or poison pursuant to a lawful prescription, a licensed pharmacist must be physically present within the confines of the dispensing area, able to render immediate assistance and able to determine and correct any errors in the compounding, preparation or labeling of that drug, medicine or poison before the drug, medicine or poison is dispensed or sold. In any Class J: Shared Service pharmacy where a permit is maintained at a location for the purpose of remote dispensing as defined in 4 CSR 220-2.900 the pharmacist may be considered on duty and present as long as all required electronic connection requirements are maintained and the pharmacist is accessible at all times to respond to patient's or other health professionals' inquiries or requests pertaining to drugs dispensed through the use of the automated pharmacy system. The pharmacist personally shall inspect and verify the accuracy of the contents of, and the label after it is affixed to, any prescribed drug, medicine or poison compounded or dispensed by a person other than a licensed pharmacist.

27. Cabool Pharmacy violated Missouri laws and regulations governing the practice

of pharmacy regarding the handling, dispensing and recordkeeping of controlled substances.

28. Cabool Pharmacy violated Missouri rules and regulations governing the practice of pharmacy by failing to properly supervise all pharmacy personnel.

29. The employees and customers of Cabool Pharmacy had a relationship of professional trust and confidence in Cabool Pharmacy in that its employees and customers relied on it to make reasonable efforts to ensure compliance with all relevant pharmacy and drug laws and standards of practice.

30. Cabool Pharmacy's conduct alleged herein constitutes a violation of the professional trust and confidence placed in it by its employees and customers.

31. Cabool Pharmacy should have known that violations of pharmacy laws or rules had occurred.

32. During the Board's meeting with Mr. Morgan on or about February 10, 2006, Mr. Morgan admitted to the reuse of prescription vials and labels on refill prescriptions.

33. Reusing prescription vials and labels on refill prescriptions is in violation of Section 338.059(1), RSMo, which states:

> 1. It shall be the duty of a licensed pharmacist or a physician to affix or have affixed by someone under the pharmacist's or physician's supervision a label to each and every container provided to a consumer in which is placed any prescription drug upon which is typed or written the following information:
>
> (1) The date the prescription is filled;
>
> (2) The sequential number;
>
> (3) The patient's name;
>
> (4) The prescriber's directions for usage;
>
> (5) The prescriber's name;

(6) The name and address of the pharmacy;

(7) The exact name and dosage of the drug dispensed;

(8) There may be one line under the information provided in subdivisions (1) to (7) of this subsection stating "Refill" with a blank line or squares following or the words "No Refill";

(9) When a generic substitution is dispensed, the name of the manufacturer or an abbreviation thereof shall appear on the label or in the pharmacist's records as required in section 338.100.

34. Cabool Pharmacy violated Missouri laws and regulations governing the practice of pharmacy by reusing prescription vials and labels on refill prescriptions.

35. The employees and customers of Cabool Pharmacy had a relationship of professional trust and confidence in Cabool Pharmacy in that employees and customers of Cabool Pharmacy relied on Cabool Pharmacy to make reasonable efforts to ensure compliance with all relevant pharmacy and drug laws and standards of practice.

36. Cabool Pharmacy's conduct alleged herein constitutes a violation of the professional trust and confidence placed in Respondent by Cabool Pharmacy's employees and customers.

37. Cabool Pharmacy should have known that violations of pharmacy laws or rules had occurred.

Joint Conclusions of Law

38. Cause exists to discipline Cabool Pharmacy's permit pursuant to 4 CSR 220-2.010(1)(N), which states:

> (N) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

39. Cause exists for Petitioner to take disciplinary against Cabool Pharmacy's permit under Section 338.285, RSMo, which states:

> The board is hereby authorized and empowered, when examination or inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated or conducted according to such legal rules and regulations and the laws of Missouri with respect thereto, to cause a complaint to be filed before the administrative hearing commission pursuant to chapter 621, RSMo, charging the holder of a permit to operate a pharmacy with conduct constituting grounds for discipline in accordance with section 338.055.

40. Cause exists for Petitioner to take disciplinary action against Respondent's license under Section 338.055 RSMo, which states in relevant parts:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> * * *
>
> (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty

in the performance of the functions or duties of any profession licensed or regulated by this chapter.

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence.

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

1. Respondent's permit to operate a pharmacy shall be placed on PROBATION for a period of five (5) years. This five-year period of probation shall coincide with the five-year period of probation placed on John W. Morgan's pharmacist license as reflected in a Settlement Agreement between John W. Morgan and the Board and signed on the same date as this Settlement Agreement is signed. The period of probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

A. Respondent shall keep the Board apprised of licensed pharmacists employed by Respondent and the individuals' current home and work addresses and

telephone numbers.

B. Respondent shall pay all required fees for permitting to the Board and shall renew its permit prior to October 31 for each permitting year.

C. Respondent shall comply with all provisions of Chapter 338 and 195; all applicable federal and state drug laws, rules and regulations; and all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Respondent shall not serve as an intern training facility for interns.

E. If, after disciplinary sanctions have been imposed, Respondent fails to keep its Missouri pharmacy permit current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.

F. The parties to this Order/Agreement understand that the Board of Pharmacy will maintain this agreement as an open record of the Board as provided in Chapters 338, 610, and 620, RSMo.

G. Respondent shall conduct an Initial Inventory at this pharmacy on all scheduled controlled substances. The Initial Inventory shall be immediately available to a member of the Board or the Board of Pharmacy's staff.

H. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every three (3) months, beginning three (3) months after this Order/Agreement becomes effective, stating truthfully whether or not it has complied with all terms and conditions of this disciplinary order. Reports are due on a calendar quarter basis. Each report is due fifteen (15) days after the end of the prior calendar

quarter. For example, the report for the first quarter of the year will be due on April 15. After two (2) years are completed of the discipline, the reporting requirement shall be reduced to a six (6) month interval.

I. Respondent shall select an independent consultant for the purpose of reviewing and insuring all compliance measures are carried out in accordance with all applicable laws and regulations. Respondent shall submit documentation and credentials of his chosen consultant to the Board office for approval prior to the beginning date of probation. Said consultant shall submit a written plan to the Board office outlining what procedures or changes in operation will be implemented and on what time table is proposed for completion. The Board acknowledges that Respondent has obtained the services of an independent consultant and that the consultant has submitted a plan to the Board. The Board has approved the independent consultant and the plan as outlined in the letter from Respondent's counsel dated October 4, 2007. The consultant shall provide ongoing reports to the Board office attesting to the pharmacy's compliance or noting deficiencies for each visit made. The visits and initial report shall be provided within thirty (30) days of the beginning of probation. Visits to the pharmacy to assess compliance will be completed at a minimum of a three (3) month cycle and reports to the Board office will be provided once every three (3) months throughout the disciplinary period. The consultant shall be hired at Respondent's expense. After the first year of discipline, visits and reports by the consultant shall be reduced to a period of every six (6) months. Consultant shall perform an audit on selected controlled substances at least two times each year during the probation period. Each audit shall be performed on no fewer

than fifteen (15) controlled drugs from Schedule II, Schedule III and/or Schedule IV selected by the consultant. The controlled drugs to be selected for audit by the consultant shall have a relatively high potential for abuse, diversion and/or resale. Consultant shall not inform Respondent of the drugs selected for audit until consultant arrives at Respondent's pharmacy for an inspection report.

2. Upon the expiration of said discipline, Respondent's permit to operate a pharmacy in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Respondent has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the Respondent.

3. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

4. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further

discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

5. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

_____ REQUESTS

_____ DOES NOT REQUEST

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S

PERMIT TO OPERATE A PHARMACY.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's permit and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's permit. Effective the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's permit, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement agreement goes into effect 15 days after the document is signed by the Board's Executive Director.

RESPONDENT

KIDI, INC. d/b/a
CABOOL PHARMACY

By: _____
John W. Morgan
President

Date: 3-11-08

PETITIONER

MISSOURI BOARD OF
PHARMACY

By: _____
Debra C. Ringgenberg
Executive Director

Date: 3-17-08

HUSCH BLACKWELL SANDERS, LLP

By: _____
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